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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. .....

TOM D. AMER,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

No. .....

YIN KIM,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

Consolidated Petitions for Writs of Certiorari to the Supreme Court of the State of California.

Petitioners pray that writs of certiorari issue to review the orders of the Supreme Court of the State of California entered on August 21, 1947 [Tr.A. Order, R.A. ..18..; Tr. K. Order, R.K. ..15..][1] denying petitions for writs of prohibition.

[1]The records as of the time of the filing of this petition, are not yet printed. They are being printed by the Clerk of this Court. References will be made to the Clerk's Transcript with space left to insert the references to the printed record when completed. References to the Transcript and to the Record in the Amer case will be thus: [Tr.A, 1; R.A. .....]. References to the Transcript and to the Record in the Kim case will be thus: [Tr.K. 1; R.K. .....].

Jurisdiction.

The orders of the Supreme Court of the State of California were entered August 21, 1947 [Tr.A. Order; R.A. 18; Tr.K. Order; R.K. 15]. The issue as to which petitioners seek this Court's review involves the validity under the Fourteenth Amendment to the United States Constitution of the enforcement by a State Court by way of injunction of restrictive covenant agreements which provide that an owner of a residence may not live in his home if he be not of the Caucasian race. This issue was decided adversely to petitioners over their objection in the Trial Court [Tr.A. 3; R.A. 2; Tr.K. 3; R.K. 2] and adversely to petitioners over their objections by the State Supreme Court [Tr.A. Order; R.A. 18; Tr.K. Order; R.K. 15].

The jurisdiction of this court is invoked under Judicial Code, section 237b, amended (28 U. S. C. 344 (b)).

Questions Presented.

Whether injunctive enforcement by a State Court of restrictive covenant agreements which prohibit the owners of residences to live in their own homes solely because they are not of the Caucasian race is invalid because:

1. Such enforcement violates the due process and equal protection clauses of the Fourteenth Amendment;
2. Such enforcement violates Revised Statutes, Section 1978 (8 U. S. C. 42);
3. Such enforcement violates Article 55c and 56 of the United Nation's Charter.

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Constitutional, Treaty and Statutory Provisions Involved.

Section 1 of the Fourteenth Amendment to the United States Constitution provides in part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Revised Statutes, Section 1978 (8 U. S. C. 42) provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The United Nation's Charter provides in part:

> Art. 55. "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: * * *
>
> (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."
>
> Art. 56. "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

Statement of the Case.

FACTS:

Petitioners are both United States citizens and decorated overseas veterans of the Armed forces [Tr.A. 1; R.A. 1; Tr.K. 1; R.K. 1] Petitioner Amer is of Chinese ancestry [Tr. 1; R.A. 1]; petitioner Kim is of Korean ancestry [Tr.K. 1; R.K. 1]. Petitioners own their own homes in Los Angeles, California, live in them and are threatened with state court injunctive orders directing them to vacate their homes because their properties are covered by restrictive covenants which provide that persons who are not of the Caucasian race cannot occupy the premises except in the capacity of servants [Tr.A. 2, p. 2 of Ex. B of App. A, R.A. 2,15; Tr.K. 2, p. 3 of App. A, R.K. 1,12]. To prevent the Trial Court from so ordering them out petitioners filed their petitions for writs of prohibition in the lower court [Tr.A. 1 *et seq.*, R.A. 1-17; Tr.K. 1 *et seq.*, R.K. 1-15] on the ground that said threatened action by the Trial Court violated the Fourteenth Amendment to the United States Constitution, the laws of the United States and the Charter of the United Nations.

DECISIONS BELOW:

On these facts the lower court denied the writs, one Justice voting to grant them [Tr.A, Order, R.A. 18; Tr.K. Order, R.K. 15]. No opinions were written.

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Reasons for Granting the Writ.

1. This court has already granted writs of certiorari in two cases involving the validity of judicial enforcement of racial restrictive covenants[2] and has before it two other petitions from the District of Columbia.[3] All of those cases however involve persons who are Negroes. The petitioners here are of different "non-Caucasian" races but are similarly affected by the restrictive covenant. The cases should all be considered together so that this court can examine into the extent to which restrictive covenants have spread themselves over the land and how they are affecting all the racial minority groups. In addition there are in the courts of California many cases involving other "non-Caucasians." For example: Japanese, *Tracy et al. v. Matsuura, et al.*, No.527327; American Indian, *Pearce et al. v. Crocker, et al.*, No. 508294, both in the Superior Court of the State of California, in and for the County of Los Angeles.

2. The lower court's upholding the propriety of a state court enforcing the covenants is contrary to the decision of this court in *Buchanan v. Worley*, 245 U. S. 60, which held that state action which forbade one race from

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[2]*Shelley v. Kraemer*, No. 72, Oct. Term, 1947 (from Supreme Court of Missouri); *McGhee v. Sipes*, No. 87, Oct. Term, 1947 (from Supreme Court of Michigan).

[3]*Hurd et al. v. Hodge, et al.*, No. 290, Oct. Term 1947; *Urciolo, et al. v. Hodge, et al.*, No. 291, Oct. Term, 1947.

moving into a block occupied by another race except with the latter's consent violated the due process clause of the Fourteenth Amendment.

3. The lower court's ruling permitting enforcement by state courts of the covenants violates the Civil Rights Act, 8 U. S. C. 42. This is an important Federal question which has not been, but should be, decided by this court.

4. The lower court's ruling permitting the enforcement of the covenants violates Article 55c and 56 of the United Nation's Charter (59 Stat. 1031, 1045-1046). This is an important Federal question which has not been, but should be, decided by this court.

5. There is widespread misunderstanding of this court's decision in *Corrigan v. Buckley,* 271 U. S. 323. Since that decision in 1926 the courts have relied on that decision as saying that state court *enforcement* of racial restrictive covenants does not violate the Constitution. That question was not before this court in that case and was not decided by it. This court should therefore consider the problem and clear up the confusion which has resulted in the establishment of a ghetto system in the United States.[4]

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[4]Robert E. Cushman, "The Laws of the Land," 36 Survey Graphic 14, 17 (1947); Gunnar Myrdal, "An American Dilemma," 624 (1944).

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ARGUMENT

IN SUPPORT OF CONTENTION THAT THE RULING OF THE LOWER COURT IS ERRONEOUS.

I.

A Court Injunction Ordering a Home Owner Out of His Own House Solely Because of His Race Is State Action Contrary to the Due Process and Equal Protection Clauses of the XIVth Amendment.

In *Buchanan v. Worley*, 245 U. S. 60; *Harmon v. Tyler*, 273 U. S. 568 and *City of Richmond v. Deans*, 281 U. S. 704, this court clearly decided that legislative action by municipalities setting up what were in effect restrictive covenants was state action contrary to the Fourteenth Amendment.

An order of a state court is state action.

Ex parte Virginia, 100 U. S. 338, 346-7;

Bridges v. California, 314 U. S. 252.

And a state cannot, through its courts, violate the Constitution any more than it can through its legislature.[5]

---

[5]*Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 234, 235; *Virginia v. Rives*, 100 U. S. 313, 318; *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 34-6; *Hansberry v. Lee*, 311 U. S. 32, 41; *American Federation of Labor v. Swing*, 312 U. S. 321; *Bakery Drivers Local v. Wohl*, 315 U. S. 769; *Cantwell v. Connecticut*, 310 U. S. 296; *Twining v. New Jersey*, 211 U. S. 78, 90-1; *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673; *Powell v. Alabama*, 287 U. S. 45; *Moore v. Dempsey*, 261 U. S. 86; *Scott v. McNeal*, 154 U. S. 34.

It is one thing to say that private parties may agree not to permit a certain race to occupy property. That agreement is private action, and so long as the parties do not seek state aid, the constitutional provision may not be violated. It is quite another thing, however, for the state, through its judicial agency to exercise state power and force a landowner out of his home solely because of his race. That is state action and it is state action solely on the basis of race and therefore contrary to the Constitutional provision.

The point was probably best stated by Judge Ross long ago in *Gandolfo v. Hartman,* 49 Fed. 181, 192, 193:

> "It would be a very narrow construction of the Constitutional amendment in question and of the decisions based upon it, and a very restricted application of the broad principles upon which both the amendment and the decisions proceed, to hold that, while State and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the State may lawfully do so by contract, which the Courts may enforce. Such a view is, I think, entirely inadmissible. Any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the court should no more enforce the one than the other . . . But the principle governing the case is, in my opinion, equally applicable here, where it is sought to enforce an agreement made contrary to the public policy of the government, in contravention of one of its treaties, and in violation of a principle embodied in its Constitution. Such a contract is absolutely void, and should not be enforced in any court—certainly not in a court of equity of the United States."

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II.

A State Court Injunction Ousting a Landowner From His Home Solely on the Basis of His Race Violates Revised Statutes, Section 1978.

Petitioners are citizens of the United States [Tr.A. 1, R.A. 1; Tr.K. 1; R.K. 1].

Revised Statutes, Section 1978 (8 U. S. C. 42) provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Certainly the right to hold property includes the right to use it. In the case of residential property, indeed, the right to hold such property without the right to live on it is an empty shell.

A state court order which ousts a landowner citizen from his home is just as clear a violation of the Statute as this court declared the municipal ordinance in *Buchanan v. Worley*, 245 U. S. 60 to be.

III.

State Court Enforcement of Restrictive Covenants Violates the United Nation's Charter.

Treaties of the United States are the Supreme Law of the Land.

U. S. Constitution, Article VI, Clause 8;

Kennett v. Chambers, 14 How. (U. S.) 38.

The Charter of the United Nations, and Article 55c and 56 thereof, is a Treaty of the United States.

59 Stat. 1031, 1045-1046.

These sections provide for the "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race," and that the members (of which the United States is one) "pledge themselves to take joint and separate action" to effect that purpose. Certainly this agreement supersedes the right of any state through its court to partake of action which is in derogation of those rights and which, in effect, violate the Treaty and the Supreme Law of the Land.

Kennett v. Chambers, 14 How. 38;

United States v. Pink, 315 U. S. 203;

Hauenstein v. Lynham, 100 U. S. 483;

Gandolfo v. Hartman, 49 Fed. 181;

Cf. *Re Drummond Wren* (Canada, 1945), 4 Dom. L. R. 674.

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IV.

Corrigan v. Buckley, 271 U. S. 323, Decided by This Court in 1926 Has Been Misinterpreted and Has Given Rise to Erroneous Law in the State and Federal Courts.

In *Corrigan v. Buckley,* the question before this court was whether a restrictive covenant agreement *per se* was *void* under the Fifth, Thirteen and Fourteenth Amendments and under Revised Statutes, Section 1977, 1978 and 1979. There was no question of a court *enforcing* the agreement and ordering a citizen owner out of his own house. This court dismissed the appeal for want of jurisdiction on the ground that the provision in question prohibited governmental action and the mere making of an agreement without asking a court of equity to *enforce* it was not action by the government but was simply action between private individuals. This court specifically declined to pass on the question of enforcement because that question was not before it. Said the court:

> "And, while it was further urged in this Court that the *decrees of the courts below in themselves* deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the Code provision, *it was not raised by the petition for the appeal or by any assignment of error, either in the Courts of Appeals or in this Court;* . . ."
>
> ". . . *we cannot determine upon the merits the contentions earnestly pressed by the defendants in*

this court that the indenture is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant."

"Hence, *without a consideration of these questions, the Appeal* must be, and is *Dismissed for want of jurisdiction."* (Italics added.)

Unfortunately the court below and many other courts have refused or neglected to recognize the limited basis of this court's previous ruling.

Conclusion.

In times such as these when housing is so critical even for the mere fortunate "Caucasion," the extension of the racial restrictive covenant has made the lot of the "non-Caucasian" even more gratingly frustrating. And the deleterious effect on the community as a whole is incalculable. It is not a question of white versus black nor even of Causasian versus non-Caucasian. Recent covenants have been drafted to include persons "who worship on the 6th day." If enforcement by state courts of covenants based upon race is permitted to stand, the logic of such decisions is too irrefutable to prevent other, equally serious, inroads into our constitutional liberties. If such is our constitutional law, then there is nothing to prevent enforcement of covenants against home owners because they are Catholics, or Jews, or Protestants, or Republicans, or Democrats, or because they believe in Socialism or because their hair is red. At last a way will have been discovered to, by those who would, evade the constitutional guarantees.

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Petitioners do not believe that they fought in, nor that World War II was fought for, the purpose of extending the ugly head of racism in this country. Rather do they believe that the war was waged to eradicate this cancer. Petitioners speak as two of the millions of little people of this country. They plead for a simple right which they apprehend is inherent in the Constitutional way of life: The right to own and live in the home of one's choice.

This court's granting of the petitions will vindicate that belief.

If this court grants these petitions it is respectfully requested that hearing be set down so that these cases may be heard along with and at the same time as *McGhee v. Sipes,* No. 87, October Term, 1947, and *Shelley v. Kraemer,* No. 72, October Term, 1947.

A. L. WIRIN,
LOREN MILLER,
Attorneys for Petitioners.

FRED OKRAND,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 429

TOM D. AMER,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES,

Respondents.

No. 430

YIN KIM,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES,

Respondents.

Brief for Respondents in Opposition to Consolidated Petitions for Writs of Certiorari.

Statement of the Case.

Petitioners seek Writs of Certiorari to review orders of the Supreme Court of California denying their petitions for Writs prohibiting the respondent trial court, the Superior Court of the State of California, in and for the County of Los Angeles, from further proceedings in the respective cases. As disclosed by the Transcript of the

Record [R. A. 5, R. K. 7],[1] the respective complaints alleged that the defendants (petitioners here) were persons not of the Caucasian race, and were occupying premises limited by contracts, duly recorded, to occupancy by persons of the Caucasian race; the answers raised various issues, including the constitutional questions mentioned in the Petition and supporting brief here. Thereafter petitioners moved the trial court for judgment on the pleadings, arguing their constitutional propositions; when such motions were denied, petitioners sought, and were denied, the above mentioned Writs of Prohibition in the California Supreme Court.

Although technically the respondent in the two cases is the Superior Court, the real parties in interest are the plaintiffs in the cases pending in that Court which are referred to in the petition, and throughout this brief, in referring to respondent and their rights we shall mean the real parties in interest.

This petition, and petitioners' defenses in these cases, represent an attempt by petitioners to add a new right to the property they bought, one which they did not buy and have never had, *i. e.*, the right to use and occupy the property in question. Petitioners purchased their property with knowledge that there was a restriction agreement duly recorded which would prevent all persons except Caucasians from living in the property. No right is taken from petitioners by the restrictions; on the contrary, they seek to take from respondents a valuable property right, that is, the right to live in the sort of a community which their contract was designed to preserve.

---

[1]In referring to the Transcript of Record, we shall designate in the *Amer* case as R. A. and in the *Kim* case as R. K.

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Petitioners imply that deeds and agreements restricting use of real property to members of the Caucasian race are new to the law, but, of course, that is not the case. Such restrictions have been in use in many, if not all, of the states for many years and their validity has been universally upheld.

Petitioners contend that the agreement in these cases is unenforceable because, they say, its enforcement would violate the following: (1) the due process and equal protection clauses of the Fourteenth Amendment; (2) Revised Statutes, Sec. 1978 (8 U. S. C. 42), and (3) Articles 55c and 56 of the United Nations Charter. We shall answer these contentions in the order in which they are advanced in petitioners' argument.

I.

Enforcement by a Court of a Contract Entered Into by Private Citizens Is Not Such an Act of a State as Is Prohibited by Any Clause of the Fourteenth Amendment.

Although petitioners do not distinguish between the due process and equal protection clause, there is, of course, a wide distinction and we shall discuss these clauses separately.

(a) The "Due Process" Clause.

Respondents have no quarrel with decisions of this court in *Buchanan v. Worley*, 245 U. S. 60, and in the other cases cited by petitioners (Petition, p. 7), holding that zoning ordinances enacted by municipalities classifying areas as to racial occupancy were acts of the state, in violation of the Fourteenth Amendment. An ordinance adopted by a municipality as an agency of the state is an act of the state, and if it denies due process or equal pro-

tection of the law it is in violation of the Constitution, but that has nothing whatsoever to do with the right of private individuals to contract with respect to their property rights. It is difficult to see how any contract between private individuals could be said to deny anyone due process of law.

In order to determine whether or not the due process clause of the Fourteenth Amendment has been violated, it is wise to consider what that clause means. In *Anderson National Bank v. Luckett*, 64 S. Ct. 599, 606, 321 U. S. 233, 88 L. Ed. 692, 151 A. L. R. 824, this court said:

> "The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. If that is preserved, the demands of due process are fulfilled."

Petitioners do not claim that they will not receive an opportunity to be heard when this cause is tried, but, instead, seek to prohibit the trial court from proceeding because the trials might result in decrees enjoining them from living in the restricted houses which they purchased. There can be no such decrees until after the cases have been tried; petitioners then would have the right to appeal. A fair trial and an opportunity to appeal from an adverse decision is due process. The constitutional right to due process does not guarantee any litigant success in his litigation. Clearly there is no actual or threatened violation of the due process clause here; the right to file this petition and have it considered by this court is a part of due process of law.

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(b) THE "EQUAL PROTECTION" CLAUSE.

Petitioners themselves apparently recognize the impossibility of sustaining the argument that the contracts involved in these cases violate either the due process clause, the equal protection clause or any other clause of the United States Constitution or any statute or treaty. They say that "so long as the parties do not seek state aid, the constitutional provision may not be violated." (Petition, p. 8.) In other words, it is the method of enforcement of Respondents' rights under the contracts that is objectionable to petitioners. This argument would seem to concede that if respondents, instead of going to the court in an orderly manner to enforce their contract rights, just as they would have done on a suit on a promissory note or to enforce the specific performance of a contract, had resorted to some form of self-help they would have been within their rights. The idea that a contract can be perfectly valid and binding and yet that the courts cannot enforce it certainly is novel. How would such a contract be enforced? Certainly petitioners would not advocate resort to methods of enforcement which would not seek the aid of the courts.

In support of their argument that the due process and equal protection clauses are being violated, petitioners cite (p. 7) various cases which they say support their argument that, although the agreement itself may be valid, its enforcement by a state court would violate the Fourteenth Amendment. Without reviewing these cases individually, suffice to say, not one of them supports petitioners' position. On the other hand, with the exception of *Dandolfo v. Hartman*, 49 Fed. 181, a very old case in a federal District Court, which never has been fol-

lowed, the reported cases have consistently upheld the constitutionality of race restrictions and their enforcement by the courts. Some of the leading cases are: *Corrigan v. Buckley,* 271 U. S. 323; *Mays v. Burgess,* 147 F. (2d) 869, certiorari denied by this court, 65 S. Ct. 1406; *Parmalee v. Morris,* 218 Mich. 625, 188 N. W. 330, 38 A. L. R. 1180.

The precise points urged by petitioners has been decided adversely to their contentions in several cases in California, as well as in other states and is discussed by this Court in *Corrigan v. Buckley, supra,* to which we shall refer more fully at a later point in this brief. In *Title Guarantee and Trust Company v. Garrott,* 42 Cal. App. 152, 154, the court said:

> "The fourteenth amendment, it is true, applies to the judicial as well as the legislative department of the state government. But the judiciary does not violate this provision of the federal constitution merely because it sanctions discriminations that are the outgrowth of contracts made by individuals."

A petition to have the *Title Guarantee* case heard by the California Supreme Court was denied. Shortly thereafter, the California Supreme Court decided a case entitled *Los Angeles Investment Company v. Gary,* 181 Cal. 680, 682. In the opinion in the later case, the Supreme Court said of the opinion in the *Title Guarantee* case:

> "The decision in that case was presented to us for consideration by a petition for rehearing, and the petition was denied because of our conclusion that the decision was correct, a conclusion from which we see no reason for departing."

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In the late case (1944) of *Burkhardt v. Lofton*, 63 Cal. App. (2d) 230, 238, the District Court of Appeal, in considering precisely the same arguments against the enforcement of a restriction that petitioners urge here said:

> "The decree of the trial court in the instant case was not, within constitutional principles, action by the state through its judicial department. Plaintiffs' rights are derived from their contract, the subject matter of which belonged exclusively to the contracting parties. The decree appealed from created no rights in plaintiffs; it only declared what they are and provided for their enforcement. *If the contract is valid it cannot be nullified under any theory that courts are without the power to enforce it.*" (Italics supplied.)

The California Supreme Court denied a petition for hearing in the *Burkhardt* case, so that case also has the approval of the highest court of the state.

Other cases in which the California courts have upheld such restrictions are *Janss Investment Company v. Walden*, 196 Cal. 753; *Wayt v. Patee*, 205 Cal. 46; *Fairchild v. Raines*, 24 Cal. (2d) 818; *Stone v. Jones*, 66 Cal. App. (2d) 264 (1944) (petition for hearing by Supreme Court denied); *Shideler v. Roberts* (1945), 69 Cal. App. (2d) 549. Other recent cases are summarized in a note in 162 A. L. R. 180.

II.

Section 1978 of Revised Statutes Is Not Violated.

> "The statutes, therefore, can afford no more protection than the Constitution itself. If, therefore, there is no infringement of defendants under the Constitution, there can be none under the statutes."

This language from the lower court in *Corrigan v. Buckley*, 299 Fed. 899, 902 states very aptly respondent's position.

The same arguments and cases as demonstrate the constitutionality of the restrictions uphold respondents' contention that Section 1948 of Revised Statutes is not violated. Private action by private citizens is not involved in that section of the Revised Statutes and certainly if the requirements of due process and equal protection are met, no one is being deprived of any right. We need only remind ourselves of the fact that petitioners acquired title to the property in question with knowledge of the restriction and forthwith violated it. They did not purchase the right to occupy the property; obviously they could not acquire such a right by their deliberate and premeditated violation of the restriction. How can they be deprived of a right they never had?

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III.

The United Nations Charter Does Not in Any Way Affect State Court Enforcement of Contracts Entered Into by Private Citizens of the United States.

It is, of course, true that treaties of the United States are the supreme law of the land, but the sections of the Charter of the United Nations quoted by petitioners (p. 10) have no application in the instant case. Nothing in that Charter purports to pledge the United States to interfere in the private contractual rights of its citizens.

This case involves a question of whether respondents can *maintain* certain rights that they have had or whether petitioners can *acquire* certain rights that they never have had, *i. e.*, the right to occupy certain property which they willingly bought, even though they knew that their predecessors in title had agreed with the owners of other properties in the community that it should not be used or occupied by persons other than of the white or Caucasian race. Petitioners, upon their purchase of the properties, became bound by that solemn contract. They now seek to abolish the long-recognized rights of their predecessors, and of plaintiffs, so to limit the use of that property.

There is no lack of "respect" for "human rights" on the part of respondents. They merely seek to maintain their own right to live in the type of community they prefer, against persons who seek to destroy that right, and by so doing to add to their property new rights they did not purchase or otherwise acquire.

None of the cases cited by petitioners (p. 10) have any application to the facts in this case.

IV.

Corrigan v. Buckley, 271 U. S. 323, Has Not Been Misinterpreted.

Petitioners (p. 11) state that in *Corrigan v. Buckley*, "There was no question of a court enforcing the agreement and ordering a citizen owner out of his own house." An examination of the case, and of the report of the case in the lower court discloses that plaintiff filed a bill of complaint to restrain defendant Corrigan from conveying certain real estate in the District of Columbia to defendant Curtis, who was a Negro, and to restrain defendant Curtis from using or occupying the same, each of which acts would violate a restriction agreement which had been entered into by plaintiff and defendant Corrigan and 28 other persons who owned land in the immediate vicinity. Defendant Corrigan had entered into a contract with defendant Curtis to sell him the house. Defendant Curtis filed a motion to dismiss the bill on the ground that it was void because it deprived him of property without due process of law, it abridged the privileges and immunities of citizens of the United States, and denied equal protection of law. The trial court denied the motion and defendants elected to stand on their motion and a decree of injunction was entered. Certainly, this was a question of a court *enforcing* the agreement. True, a "citizen owner" was not ordered out of his own house, but only because the bill was filed before the conveyance had been executed and before defendant Curtis had entered into use and occupancy of the premises.

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Petitioners have completely misconstrued the factual situation in the *Corrigan* case when they state (p. 11) that "the mere making of an agreement without asking a court of equity to *enforce* it was not action by government but was simply action between private individuals." The trial court *had entered a decree to enforce the agreement* and the appeal was from such entry.

Petitioners then quote (p. 11) certain language of this court which appears on page 331 of the *Corrigan* case. Their first quotation ends wth a semi-colon and omits the very significant ending of the sentence quoted. The words omitted are, *"and it likewise is lacking in substance."* In other words, this court pointed out, that the contention made by appellants there, and by petitioners here, that the court decree itself violated the Constitution, was not raised in the petition so it could not serve as a basis for the appeal, but this court added the pertinent conclusion that such contention was "lacking in substance." And although the statement omitted by petitioners may be *dictum*, it is an expression of opinion by this court on the very contention herein urged by petitioners. So although it may be true that this court did not have to pass on the contention, it is equally true that this court considered it "lacking in substance."

Conclusion.

Although petitioners refer to the critical housing situation, such discussion is entirely outside the record. We are here concerned only with these petitioners and these restrictions. There is no evidence in the record to disclose whether or not petitioners, or either of them, are victims of the nationwide shortage of housing, and if there were it could not affect respondents' rights under the contract, nor add anything to petitioners' rights. Neither is there evidence of any "extension" (Petition, p. 12) of the restrictive covenant and petitioners' gratuitous remarks on that subject have no place in their proceeding.

Conjuring up various types of agreements which someone someday might enter into or seek to enforce is to no purpose here. As said in *Stone v. Jones* (*supra*), 66 Cal. App. (2d) 264, 269:

> "Collateral possibilities or indirect consequences are beside the issue. Changes or the likelihood thereof, incident to the growth of a community, may create or forecast perplexing social problems, but such problems, from the very nature of things, cannot be solved by the courts in the process of litigation of a purely private nature. Any attempt to do so would be an unwarranted interference with the functions of other branches of the government already equipped with power and means for the comprehensive consideration of such problems."

Petitioners speak often of "rights," but they refuse to recognize the rights of respondents. They completely ignore the facts. We submit once more, petitioners willingly bought homes they knew they would not be entitled to occupy. They got what they paid for. Can this court now give them something more than they bargained for, thereby depriving respondents of rights which are precious to them?

We respectfully submit that the many decisions hereinbefore cited upholding the constitutionality of these agreements are sound, and well-reasoned and that petitioners have advanced no contentions sufficient to change the established law, nor to justify the granting of the Writs which they seek.

Respectfully submitted,

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DEC 28 1

Petitioner,

No. 430

Respondent.

In

Supreme Court of the State of California, In and for the County of Los Angeles

Brief of the Japanese American Citizens League, Amicus Curiae, in Support of Writ of Certiorari to the Supreme Court of the State of California.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 429

TOM D. AMER,

Petitioner.

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

No. 430

YIN KIM,

Petitioner.

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

Brief of the Japanese American Citizens League, Amicus Curiae, on Petitions for Writs of Certiorari to the Supreme Court of the State of California.

Interest of the Japanese American Citizens League.

The Japanese American Citizens League (JACL) is an organization composed of United States citizens. Membership is open, regardless of race, creed, or color. The JACL is striving for the realization of the goal that

there shall be equal rights and equal opportunity for all, unhampered by the happenstance of race.

The JACL is convinced that any discriminatory treatment of segments of our population, small or large, based solely on the accident of birth, runs contrary to this country's ideal. Accordingly, though its chief interest is with problems pertaining to persons of Japanese ancestry, the JACL is vitally concerned with problems affecting anyone where the issues arise merely because such persons were born or not born of a particular race. It is evident to the JACL that a wrong done one group by reason of its race ultimately curtails the rights of other racial groups and consequently undermines the stability and security of the whole of our society.

The widespread growth of the race restrictive covenant is such a phenomenon which calls for attention by the JACL.

Reason for Granting the Writs.

This Court has already granted petitions in four cases involving the validity of race restrictive covenants. They are *Shelley v. Kraemer,* No. 72; *McGhee v. Sipes,* No. 87; *Hurd v. Hodge,* No. 290, and *Urciolo v. Hodge,* No. 291, all in October Term, 1947.

All four of those cases are concerned with race restrictive covenants as they affect persons of the Negro race. The petitioners in the cases at bar are similarly affected as are petitioners in the four cases above mentioned. They are not, however, Negroes. Petitioner in No. 429 is of Chinese ancestry (R. A. 1), while petitioner in No. 430 is of Korean ancestry (R. K. 1). The cases illustrate how the enforcement of the covenant affects persons of other than Negro birth. They present to this Court the

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actual facts, not by way of judicial notice, of the operation of the race restrictive covenant against persons of other races living in the United States.

The same impelling reasons which urged the granting of the petitions in the four cases above mentioned are, of course, present here—plus the fact that in consideration of the problem, this Court should have before it concrete cases involving persons of different ancestry.

Accordingly it is urged that the Petitions for Writs of Certiorari to the Supreme Court of the State of California be granted.[1]

Respectfully submitted,

SABURO KIDO,
Counsel, Japanese American Citizens League, Amicus Curiae.

FRANK CHUMAN,
Of Counsel.

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[1]Counsel for *amicus curiae* have been advised that counsel for the petitioners and respondents will be ready for argument at the same time the four cases heretofore mentioned are argued in January, 1948, and that any briefs that may be filed would be filed by that time. Counsel for *amicus curiae* understand that this Court has also been so advised. We are further advised that counsel for the parties herein will arrange with counsel in the cases now set for argument, so that no further time for oral argument than that already now allotted by this Court, will be sought.

No. 429. AMER *v.* SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES; and

No. 430. KIM *v.* SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES. On petition for writs of certiorari to the Supreme Court of California. *Per Curiam:* The petition for writs of certiorari is granted. In each case the order denying a petition for writ of prohibition is vacated and the case is remanded to the Su-

preme Court of California in order to enable it to reconsider its ruling in the light of *Shelley* v. *Kraemer* and *McGhee* v. *Sipes*, 334 U. S. 1. MR. JUSTICE REED, MR. JUSTICE JACKSON, and MR. JUSTICE RUTLEDGE took no part in the consideration or decision of these cases. *A. L. Wirin* and *Fred Okrand* for petitioners. *Harold L. Kennedy, Ray C. Eberhard* and *Elisabeth Eberhard Zeigler* for respondent. *Saburo Kido* filed a brief for the Japanese American Citizens League, as *amicus curiae*, supporting the petition.